



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 25 2014

DEBARMENT DETERMINATION

CERTIFIED MAIL RETURN RECEIPT

Mr. Ronald Reid LeValley

Little River, California 95456-0361

Re: Ronald Reid LeValley, DOI Case No. 12-0020-00D; and
Mad River Biologists, DOI Case No. 12-0021-00D

Dear Mr. LeValley:

This is to provide you with my written decision as Debarring Official for the U.S. Department of the Interior (DOI) regarding your proposed debarment and that of Mad River Biologists, Inc., (MRB). After considering the information provided for the official record, I conclude that your debarment and that of MRB from Federal nonprocurement and procurement activities for a three year period is presently warranted.

I. Brief Procedural History.

DOI proposed to debar you and MRB under the provisions of 2 C.F.R. Part 180, implemented by DOI through 2 C.F.R. Part 1400, by separate Notices dated April 18, 2014. The Notices proposed debarment from Federal non-procurement and procurement program activities for a three (3) year period. Each Notice relied upon information provided in an Action Referral Memorandum (ARM) from the DOI Office of Inspector General (OIG).

DOI based your proposed debarment upon the fact of your guilty plea to charges of conspiracy to commit embezzlement and theft from an Indian tribal organization, in violation of 18 U.S.C. §§ 371 and 1163. DOI based the proposed debarment of MRB upon imputation to MRB of your criminal conduct and your affiliate relationship with MRB as its owner and operator.

You timely contested the DOI Notice of Proposed Debarment by letter dated May 8, 2014. Your contest letter requested the opportunity for an oral presentation of matters in opposition meeting (PMIO) as part of the proceedings. By email correspondence to you on May 14, 2014, David Sims, the DOI Debarment Program Manager, established a case schedule in response to your contest letter. The schedule accorded you the opportunity to submit supplemental written information including any information addressing the mitigation and remedial factors considered in reaching a decision on imposition of debarment, found at 2 C.F.R. 180.860.

You provided supplemental written information by email correspondence dated May 22, 2014. The information consisted of a copy of the pre-sentencing report and testimonial letters submitted to the District Court in the sentencing phase of your criminal case. Mr. Stanley Stocker, as DOI OIG debarment case representative, then provided a written reply memorandum dated June 11, 2014. You participated by telephone in a PMIO on June 24, 2014.

On June 24, 2014, in response to questions at the PMIO you submitted a copy of an MRB payments spreadsheet and the final pre-sentencing report from your criminal case. On June 30, 2014, Mr. Stocker submitted a pdf copy of one of the falsified invoices and the resulting payment to MRB; a copy of the contract between the Yurok Tribe and MRB; and a copy of the conviction order from your criminal case. The record closed with receipt of that submission. The matter is ready for decision.

II. Discussion.

Debarment is an administrative action taken to shield the government from individuals and entities who, because of waste, fraud, abuse, noncompliance or poor performance, threaten the integrity of Federal funded procurement and non-procurement activities. The remedy focuses on a person's "present responsibility" to participate in Federal funded procurement and nonprocurement program awards. To be presently responsible, among other factors, a person must have business honesty and integrity.

A. Participant and Contractor Status.

Debarment excludes from participation in new Federal awards a person who is or may reasonably be expected to be a participant or contractor. Under 2 C.F.R. § 180.980, "participant" is defined as "any person who submits a proposal for or enters into a covered transaction, including an agent or representative of a participant." The provisions of 2 C.F.R. § 180.120 make it clear that application is not limited to matters arising under an actual award. The scope of "participant" is also prospective. Section 180.120(a) states that the provisions of Part 180 are applicable if one is a "person who has been, is, *or may reasonably be expected to be*, a participant or principal in a covered transaction." (Italics added).

The government is a funder and consumer of an extremely broad range of goods and services. The record indicates that you have business managerial experience which includes work on projects utilizing Federal funds. Considering your employment background it is reasonable to anticipate that you may seek to participate in federally funded work, directly or indirectly, or as an agent or representative of another contractor or assistance recipient. Accordingly, as a general matter you properly fall within the regulatory definition of "participant" at 2 C.F.R. §§ 180.820 and 180.980. It is also noted that based upon your work experience you also properly fall within the regulatory definition of "contractor" under Federal Acquisition Regulation debarment rules at 48 C.F.R. § 9.403.

B. Cause for Debarment.

The presence of past misconduct is the requisite starting point for evaluation. The ARM's information presents a clear and rational basis for concern. You are the owner, operator, and chief biologist of Mad River Biologists, Inc., (MRB), a consortium performing wildlife inventory and assessment, botanical surveys, and other research under a contract for the Yurok Tribe. The Yurok Tribe is a federally recognized Native American tribe located in Del Norte and Humboldt Counties, California and a recipient of Federal assistance funds.

DOI initially suspended you and MRB on July 13, 2012, based upon the fact of the February 27, 2012, criminal Complaint returned against you in the Superior Court of California, County of Del Norte, Del Norte Judicial District. That Complaint charged you under the California Penal Code with embezzlement of public funds, embezzlement by grand theft, a special allegation of theft in the amount exceeding \$100,000.00, and conspiracy. At the beginning of 2013 the State Court Complaint was dismissed. The DOI July 13, 2012, suspension relied for cause upon the fact of the criminal Complaint. Consequently, following the dismissal of the State Court complaint, DOI terminated your suspension on February 7, 2013.

On October 11, 2013, charges were filed against you by Information in the U.S. District Court for the Northern District of California. The Information charged you with conspiracy to commit embezzlement and theft from an Indian tribal organization, in violation of 18 U.S.C. §§ 371 and 1163. On January 13, 2014 you pled guilty as charged. You were convicted on May 20, 2014.

Your offense occurred in furtherance of a scheme with Roland Raymond, the Yurok Tribe Forestry Director, to embezzle and steal tribal funds authorized for Endangered Species Act biological assessments. The scheme included submission to the Tribe of fraudulent purchase or expense reimbursement requests and the payment of fraudulent invoices submitted by MRB, ostensibly to provide funds for Mr. Raymond to give "bonuses" to tribal forestry work crews and to make money available to MRB for staff awards. The practice included submission of both inflated and completely fictitious invoices. The U.S. Probation Officer's pre-sentencing report provided for the record indicates that the scheme caused a total loss of tribal funds not less than \$852,000.

The offenses are felonies and serious. They unquestionably fall within the scope of 2 C.F.R. § 180.800 (a)(1), (3), and (4), as well as (d). The criminal conduct inherently reflects adversely on business honesty and integrity. The conviction is a matter of record. The fact of conviction establishes the existence of cause for your debarment under 2 C.F.R. §§ 180.800 (a)(1), (3), and (a) (4), and/or (d).

Under 2 C.F.R. § 180.630(a), the fraudulent, criminal, or other seriously improper conduct of an officer, director, shareholder, partner, employee or other individual associated with an organization may be imputed to the organization when the conduct occurred in connection with the individual's performance of duties for or on behalf of the organization, or with the

organization's knowledge, approval, or acquiescence. The criminal conduct occurred during and in the course of MRB's performance of contracts with the Yurok Tribe. Accordingly, imputation of the criminal conduct to MRB is proper and establishes the existence of cause for debarment of MRB.

Additionally, under 2 C.F.R. § 180.625(b), debarment may be extended to affiliates of a debarred entity. You are the owner and operator of MRB. As such you have the ability to control MRB. MRB is therefore your affiliate within the meaning of 2 C.F. R. § 180.625(b) and 180.905. Accordingly, debarment is properly extended to MRB under 2 C.F.R. § 180.625(b) based upon the fact of its affiliate relationship to you.

C. Mitigation Factors and Remedial Measures.

Debarment, both by its nature and as a matter of regulation, is not an automatic result of establishing the existence of cause for debarment. The remedy is used to protect government procurement and nonprocurement program interests only where truly warranted, rather than additional punishment for past misconduct.

In reaching a decision the Debarring Official considers along with the seriousness of the past misconduct any information presented by a Respondent persuasively indicating mitigating factors, altered circumstances, remedial measures, or other actions taken that address present responsibility. Mitigating factors and remedial measures generally considered in reaching a decision on whether to debar under 2 C.F.R. Part 180 appear at § 180.860.

Under the debarment rules the government must show the existence of cause for debarment. Upon that showing the burden shifts to the respondent to persuasively demonstrate the presence of mitigating factors or remedial measures sufficient to show that notwithstanding the existence of cause, debarment is not presently necessary to protect the government's program and award integrity interests. The information of record in this proceeding is given careful review and evaluation in connection with that provided by OIG against the applicable criteria.

1. Fulfillment of the Court Imposed Sanctions.

Your sentencing is quite recent. Indeed, you stated in the PMIO that your jail term would commence on July 1, 2014. The Court sentenced you to one year imprisonment and ordered restitution of \$750,000 to the Yurok Tribe, and \$100,000 to the Great American Insurance Company. You also stated that under the terms of your sentence you would be paying \$200 a month for the rest of your life to fulfill the court imposed restitution. The record contains no information to indicate that you are not now in the process of fulfilling your sentence. The limited information of record is considered and weighed for value in light of the overall information presented in this debarment proceeding.

A degree of ameliorative impact can attach to the experience of criminal or civil prosecution and the fulfillment of court imposed sanctions when viewed in conjunction with the overall record. However, absent buttressing mitigation information, the mere fact of involuntary completion of a

judicially imposed sentence generally fails to provide persuasive evidence of an altered present attitude regarding business honesty and integrity sufficient to show that imposition of the protection of debarment is unnecessary. In this instance the record lacks such buttressing information.

2. Self-disclosure of Misconduct and the Level of Cooperation with the Prosecution.

The act of voluntary self-disclosure of misconduct and/or extraordinary cooperation with an ensuing investigation and legal proceedings can speak to a person's present conformance with ethical standards of business conduct. The record shows that you did not self-disclose the misconduct. You assert that you cooperated fully with the prosecuting officials. The information of record is mixed. You indicate that you turned yourself in upon learning of the state charges. But that act was after the fact of initiation of investigation and prosecution. At the PMIO you stated that you provided your laptop computer to the investigators. However, other statements elicited at the PMIO indicate that a subpoena had been issued. The presentencing report indicates that you cooperated fully with investigative and prosecuting officials once the criminal investigation began. However a certain degree of cooperation is to be expected as a matter of self interest in efforts to reduce the severity of charges or sentence.

At the PMIO you stated that the prosecutors made positive statements about your level of cooperation. You were accorded an opportunity to provide a letter from the prosecutors, to indicate and corroborate the presence of any extraordinary level of cooperation with the investigative and prosecuting authorities that could be weighed in terms of evidencing an altered standard of business ethics. You have not provided the requested corroborating letter for the record. Consideration is given to the affirmative information of record. But balanced against other information of record discussed below it does not overcome the conclusion that debarment is warranted.

3. The Seriousness of the Offense and Level of Relative Culpability.

Conspiracy and theft are felony offenses. They are inherently serious in nature. The maximum penalty for your offense is five years imprisonment, a fine of \$250,000 (or twice the value of the property involved in the transaction, whichever is greater), supervised release for three years, and restitution as determined by the Court.

The Court, utilizing the Federal criminal sentencing guidelines sentenced you to ten months of incarceration, supervised release of three years, and restitution in the amount of \$750,000. The sentencing information may indicate an assessment by the Court under the Federal criminal law sentencing guidelines of a relatively lower level of culpability, at least for purposes of criminal liability. The debarment remedy serves different objectives than that of the criminal justice system. The criminal justice process addresses liability and punishment for past deeds. Debarment, an administrative remedy, focuses on responsibility and accountability with regard to the potential for present and future business risk to government award transaction integrity.

You stated in your written submissions and also at the PMIO that you do not have a previous history of wrongdoing. Your offense appears to be an isolated instance of criminal conduct in an otherwise apparently unblemished career. However, that conduct extended over a three year period, from 2007 into 2010. I note that the pre-sentencing report of the U.S. Probation Officer opines that there is nothing in the criminal case record to suggest you will be a repeat offender. However, for purposes of the business risk assessment made through this debarment decision weight is given to the fact that you as the owner and operator of MRB were instrumental in agreeing to and continuing the false invoicing practice. Your statement at the PMIO that when your staff urged an exit from the scheme you nevertheless decided to continue participation approximately six more months until termination of MRB's contract with the Tribe in 2010 also reflects adversely on your business integrity.

You offer for mitigation consideration over 80 testimonial letters provided to the District Court for impact consideration in your criminal sentencing process. These letters, from relatives, friends, and business and professional members of your community including business colleagues, consistently characterize you as demonstrating strong commitment to the environment and admirable personal traits in the conduct of business and individual affairs. However, notwithstanding these character testimonials, the personal characteristics described did not operate to preclude your commission of the criminal offense. Accordingly, they can carry negligible, if any, weight in reaching the business decision of whether to impose debarment. On balance the information about your offense and level of culpability presents a mixed picture. Some ameliorative value attaches here, but not enough to outweigh the most significant information addressed below, in reaching the decision to debar.

4. Acknowledgement of the Seriousness of the Misconduct and Acceptance of Responsibility.

Whether a person truly accepts responsibility for and acknowledges the seriousness of the misconduct which resulted in cause for debarment factors heavily into the decision on whether a potential business risk presently remains. This consideration is one of the most significant factors assessed with regard to whether imposition of debarment is warranted.

You elected to enter a guilty plea to resolve the criminal case without trial. The fact that you chose to plead guilty is considered with respect to its potential mitigation value in this debarment proceeding. Taken in context with other information of record, such an action can contribute to indices of acceptance of responsibility for illegal conduct and commitment to altered future conduct. However, without other persuasive supporting indicia of altered business attitude the action may reflect no more than self-interest in limiting the potential for significantly greater liability attendant on proceeding to trial.

Although you pled guilty to resolve the criminal prosecution, your written submissions in this debarment proceeding do not persuasively demonstrate a true acceptance of responsibility and recognition of the seriousness of the misconduct on your part. You stated in your written submissions and at the PMIO that you accept responsibility. However, you endeavor to explain away the criminal conduct as a naive mistake. You appear to characterize yourself as merely a victim of Mr. Roland's wiles. You essentially assert that you participated in a scheme to

submit false invoices to the Tribe out of a belief that somehow it was benefiting the Tribe and MRB to assist tribal and MRB employees to receive bonuses. At the time of the scheme its inherent criminality should have been patently obvious regardless of the ostensible rationale provided by the Yurok Tribal Forestry Director. Even at the late date of this debarment action you characterize your participation in the scheme in terms of a mere mistake based on a naïve trust of the Forestry Director. There appears remain a significant disconnect in your mind with respect to your conduct and conformance to appropriate standards of ethical business operations.

5. Implementation of Remedial Measures.

In reaching a decision a debarring official will consider evidence regarding implementation of appropriate remedial measures in the form of strengthened control and ethics practices designed to preclude recurrence of the misconduct giving rise to the cause for debarment. When asked at the PMIO what you would do differently as a business matter in light of your experience your answer focused exclusively on your desire to continue to work on environmental matters, endangered species issues, and photographic projects. Significantly, what you did not address was how you had or would change your business practices and procedures. When asked what processes are in place at MRB to justify invoices against work done, you responded with a generalization that you just look to see if people had done the work. You provided no detailed explanation as to specific implemented business practices designed to safeguard against fraud. The lack of reflection in your answer indicates that you continue to pose a business risk to the government and weighs heavily in the decision to debar.

I cannot satisfactorily conclude from your responses that you truly recognize the seriousness of your criminal conduct, and the threat such conduct poses to the integrity of government program operation and public confidence in them, so as to provide assurance of altered attitude and future conduct. This assessment factors most heavily into the determination that debarment is warranted here.

III. Conclusion.

The DOI action notice proposed a three (3) year debarment, the general time period provided under the rules. The record establishes the presence of cause for debarment. The record does not contain information to persuasively show the presence of sufficient mitigating factors or remedial measures. Imposition of debarment is warranted.

Prescribing the appropriate length of time of that debarment is not a precise science. Upon balancing the information presented, but most significantly the information indicating that you do not yet truly accept responsibility for and understand the seriousness of your misconduct, a three year period of debarment of you and MRB provides the appropriate degree of remedial protection for the government's non-procurement and procurement program interests. Under 2 C.F.R. § Part 180, the period of debarment imposed measures from the date of this determination.

As stated previously in this decision, debarment is a present, protective, remedy. In the event of changed circumstances, reversal of the criminal conviction upon which debarment is based, or other new relevant information about remedial or mitigation actions, you may at any time petition in writing for reinstatement as provided under 2 C.F.R. § 180.880.

Sincerely,



Debra E. Sonderman, Director
Office of Acquisition and Property Management

cc: David M. Sims, PAM
Jim Weiner, SOL
Lori Vassar, OIG
Stanley Stocker, OIG
Official Case File